



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapters II, III, IV, V, and VI

RIN 0648-XF326

Plan for Periodic Review of Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NMFS announces the existing rules that it is reviewing, as required, under section 610 of the Regulatory Flexibility Act, which had, or will have a significant impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. The intended effect of this document is to inform the public of the rules under review, to outline NMFS' review process, and to provide an opportunity to comment. In addition, information compiled through this routine action will be relevant to the regulatory reviews required under Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," and Executive Order 13777, "Enforcing the Regulatory Reform Agenda."

DATES: Written comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0054, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0054>.

2017-0054, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Kelly Denit, National Marine Fisheries Service, NOAA, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 (mark outside of envelope “Comments on 610 Review”).

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Tara Scott, (301) 427-8579 or Heather Sagar, (301) 427-8019.

SUPPLEMENTARY INFORMATION:

Background

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that Federal agencies including NMFS take into account how their regulations affect “small entities,” including small businesses, small Governmental jurisdictions, and small organizations. Under the RFA, we must either prepare a Regulatory Flexibility Analysis or certify that the regulation,

if put in place, will not have a significant economic impact on a substantial number of small entities for any regulation proposed after January 1, 1981. Section 602 of the RFA requires that NMFS issue an Agenda of Regulations identifying rules under development that are likely to have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA requires Federal agencies to review existing regulations. It requires that NMFS publish a plan in the **Federal Register** explaining how it will review its existing regulations which have or will have a significant economic impact on a substantial number of small entities. Regulations that became effective after January 1, 1981, must be reviewed within 10 years of the publication date of the final rule. Section 610(c) requires that we annually publish a list of final rules we will review during the succeeding 12 months in the **Federal Register**. The list must describe, explain the need for, and provide the legal basis for the rules being reviewed, as well as invite public comment on the rule.

In addition, information compiled through this routine action under Section 610 of the RFA will be relevant to the regulatory reviews required under Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” and Executive Order 13777, “Enforcing the Regulatory Reform Agenda.”

Criteria for Review of Existing Regulations

The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded to minimize significant economic impacts on a substantial number of small entities, consistent with the objectives of other applicable statutes. In deciding whether change is necessary, the RFA establishes five factors that NMFS must consider:

- (1) Whether the rule is still needed;

- (2) What type of complaints or comments were received concerning the rule from the public;
- (3) The complexity of the rule;
- (4) How much the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
- (5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

Plan for Periodic Review of Rules

Below is the list of rules and their summaries issued in 2010 that we will review by December 31, 2017, consistent with RFA Section 610. This list includes rules issues in 2010 for which initial and final regulatory flexibility analyses were completed.

1. Pacific Halibut Fisheries; Limited Access for Guided Sport Charter. RIN 0648-AW92 (75 FR 553; January 5, 2010). NMFS issued regulations creating a limited access system for charter vessels in the guided sport fishery for Pacific halibut in waters of International Pacific Halibut Commission Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). This limited access system limited the number of charter vessels that may participate in the guided sport fishery for halibut in these areas. NMFS issued a charter halibut permit to a licensed charter fishing business owner based on his or her past participation in the charter halibut fishery and to a Community Quota Entity representing specific rural communities. All charter halibut permit holders were subject to limits on the number of permits they may hold and on the number of charter vessel anglers who may catch and retain halibut on permitted charter vessels. This action was

necessary to achieve the approved halibut fishery management goals of the North Pacific Fishery Management Council. The intended effect was to curtail growth of fishing capacity in the guided sport fishery for halibut. This action was conducted by NMFS under authority of the Northern Pacific Halibut Act of 1982.

2. International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Initial Implementation of the Western and Central Pacific Fisheries Convention. RIN 0648-AV63 (75 FR 3335; January 21, 2010). NMFS issued regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act, which authorized the Secretary of Commerce to promulgate regulations needed to carry out the obligations of the U.S. under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, including implementing the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. The regulations included requirements related to permitting, vessel monitoring systems, vessel observers, vessel markings, reporting and recordkeeping, at-sea transshipment, and boarding and inspection on the high seas, among others. NMFS has determined that this action was necessary for the United States to satisfy its international obligations under the Convention, to which it is a Contracting Party. It has the effect of requiring that all relevant U.S. fishing vessels were operated in conformance with the provisions of the Convention.
3. Taking of Marine Mammals Incidental to Commercial Fishing Operations; Harbor Porpoise Take Reduction Plan Regulations. RIN 0648-AW51 (75 FR 7383; February 19, 2010). NMFS issued this final rule to amend the regulations implementing the Harbor

Porpoise Take Reduction Plan to address the increased incidental mortality and serious injury of the Gulf of Maine/Bay of Fundy stock of harbor porpoises (*Phocoena phocoena*) in gillnet fisheries throughout the stock's U.S. range. This action was conducted by NMFS under the authority of the Marine Mammal Protection Act.

4. Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 10. RIN 0648-AY00 (75 FR 11441; March 11, 2010). NMFS implemented approved measures in Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Amendment 10 was developed by the Mid-Atlantic Fishery Management Council to bring the FMP into compliance with Magnuson-Stevens Act requirements by establishing a rebuilding program that allows the butterfish stock to rebuild and protects the long-term health and stability of the stock; and by minimizing bycatch and the fishing mortality of unavoidable bycatch, to the extent practicable, in the MSB fisheries. Amendment 10 increased the minimum codend mesh size requirement for the long fin squid fishery; established a butterfish rebuilding program with a butterfish mortality cap for the long fin squid fishery; established a 72-hr trip notification requirement for the long fin squid fishery; and required an annual assessment of the butterfish rebuilding program by the Council's Scientific and Statistical Committee. This rule also made minor, technical corrections to the existing regulations. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act.
5. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 16; Final Rule. RIN 0648-AW72 (75 FR 18261; April 9, 2010). NMFS issued the final rule to implement measures approved under Amendment 16 to the NE Multispecies Fishery

Management Plan. Amendment 16 was developed by the New England Fishery Management Council as part of the biennial adjustment process in the FMP to update status determination criteria for all regulated NE multispecies and ocean pout stocks; to adopt rebuilding programs for NE multispecies stocks newly classified as being overfished and subject to overfishing; and to revise management measures, including significant revisions to the sector management measures, necessary to end overfishing, rebuild overfished regulated NE multispecies and ocean pout stocks, and mitigate the adverse economic impacts of increased effort controls. This final rule also implemented new requirements under Amendment 16 for establishing acceptable biological catch (ABC), annual catch limits (ACLs), and accountability measures (AMs) for each stock managed under the FMP, pursuant to the Magnuson-Stevens Act. Finally, this action added Atlantic wolffish to the list of species managed by the FMP. This action was necessary to address the results of the most recent stock assessment, which indicate that several additional regulated species are overfished and subject to overfishing, and that stocks currently classified as overfished require additional reductions in fishing mortality to rebuild by the end of their rebuilding periods. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act

6. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 31. RIN 0648-AX67. (75 FR 21512; April 26, 2010).

NMFS issued this final rule to implement Amendment 31 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule implemented restrictions applicable to the bottom longline component of the reef fish fishery in the exclusive economic zone (EEZ)

of the eastern Gulf of Mexico. The restrictions included a bottom longline endorsement requirement, a seasonal closed area, and a limitation on the number of hooks that can be possessed and fished. The intent of this rule was to balance the continued operation of the bottom longline component of the reef fish fishery in the eastern Gulf while maintaining adequate protective measures for sea turtles. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act.

7. Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Amendment 3; Final Rule. RIN 0648-AW65 (75 FR 30483; June 1, 2010). NMFS published this final rule to implement the Final Amendment 3 to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). As it developed Amendment 3, NMFS examined a full range of management alternatives available to rebuild blacknose sharks and end overfishing of blacknose and shortfin mako sharks, consistent with recent stock assessments, the Magnuson-Stevens Act, and other applicable law, and evaluated options for managing smooth dogfish as a highly migratory species under the HMS FMP. This final rule implemented the final conservation and management measures in Amendment 3 for blacknose sharks, shortfin mako sharks, and smooth dogfish. In order to reduce confusion with spiny dogfish regulations, this final rule places both smooth dogfish and Florida smoothhound into the "smoothhound shark complex." This final rule also announced the opening date and 2010 annual quotas for small coastal sharks. These changes could have affected all fishermen, commercial and recreational, who fish for sharks in the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act.

8. Endangered and Threatened Wildlife and Plants: Final Rulemaking to Establish Take Prohibitions for the Threatened Southern Distinct Population Segment of North American Green Sturgeon. RIN 0648-AV94 (75 FR 30714; June 2, 2010). This final Endangered Species Act (ESA) section 4(d) rule represented the regulations that we, NMFS, believe necessary and advisable to conserve the threatened Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*; hereafter Southern DPS). We applied the prohibitions listed under ESA section 9 for the Southern DPS, and we highlighted specific categories of activities that were likely to result in take of Southern DPS fish. We did not find it necessary and advisable to apply the take prohibitions to certain categories of activities that contribute to conserving the Southern DPS. We also provided a variety of methods by which take of the Southern DPS may have been authorized. This document also announces the availability of a final environmental assessment that analyzed the environmental impacts of promulgating the 4(d) regulations for the Southern DPS. This action was conducted by NMFS under the authority of the ESA.
9. Pacific Halibut Fisheries; Limited Access for Guided Sport Charter Vessels in Alaska. RIN 0648-AY85 (75 FR 56903; September 17, 2010). NMFS issued regulations amending the limited access program for charter vessels in the guided sport fishery for Pacific halibut in the waters of International Pacific Halibut Commission Regulatory Area 2C (Southeast Alaska) and Area 3A (Central Gulf of Alaska). These regulations revised the method of assigning angler endorsements to charter halibut permits to more closely align each endorsement with the greatest number of charter vessel anglers reported for each vessel that a charter business used to qualify for a charter halibut

permit. This action was necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council. This action was conducted by NMFS under authority of the Northern Pacific Halibut Act of 1982.

10. Fisheries of the Exclusive Economic Zone Off Alaska; Modified Nonpelagic Trawl Gear and Habitat Conservation in the Bering Sea Subarea. RIN 0648-AY34 (75 FR 61642; October 6, 2010). NMFS issued a final rule that implemented Amendment 94 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. Amendment 94 required participants using nonpelagic trawl gear in the directed fishery for flatfish in the Bering Sea subarea to modify the trawl gear to raise portions of the gear off the ocean bottom. Amendment 94 also changed the boundaries of the Northern Bering Sea Research Area to establish the Modified Gear Trawl Zone (MGTZ) and to expand the Saint Matthew Island Habitat Conservation Area. Nonpelagic trawl gear also was required to be modified to raise portions of the gear off the ocean bottom if used in any directed fishery for groundfish in the MGTZ. This action was necessary to reduce potential adverse effects of nonpelagic trawl gear on bottom habitat, to protect additional blue king crab habitat near St. Matthew Island, and to allow for efficient flatfish harvest as the distribution of flatfish in the Bering Sea changes. This action was intended to promote the goals and objectives of the Magnuson- Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act.
11. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Regulatory Amendment to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands. RIN 0648-AY05 (75 FR 67247; November 2, 2010). NMFS issued this

final rule that implemented a regulatory amendment to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council. This rule modified the Bajo de Sico seasonal closure from a 3-month closure to a 6-month closure, and prohibits fishing for and possession of Caribbean reef fish in or from the EEZ portion of Bajo de Sico during the closure. The final rule also prohibited anchoring in the EEZ portion of Bajo de Sico year-round. In addition to the measures contained in the regulatory amendment, this final rule also added spear to the list of allowable gears in the commercial sector of the Caribbean reef fish fishery and revises the title of the FMP in the list of authorized fisheries and gear. The intended effect of this rule was to provide further protection for red hind spawning aggregations and large snappers and groupers, and better protect the essential fish habitat where these species reside. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act.

12. Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program. RIN 0648-AW24 (75 FR 69016; November 10, 2010). NMFS issued a final rule to amend regulations implementing the North Pacific Groundfish Observer Program (Observer Program). This action was necessary to improve the operational efficiency of the Observer Program, as well as to improve the catch, bycatch, and biological data collected by observers for conservation and management of the North Pacific groundfish fisheries, including those data collected through scientific research activities. The final rule was intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery

Management Plan for Groundfish of the Gulf of Alaska. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act.

13. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Management Measures. RIN 0648-BA04 (75 FR74656; December 1, 2010). NMFS issued this final rule to implement actions identified in a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule reduced the commercial quota for red grouper and, thus, the combined commercial quota for shallow water grouper species, and requires vessels with valid commercial Gulf of Mexico reef fish permits to mark their buoy gear with the official vessel number. This rule also implemented minor revisions to codified text, including a revised definition of buoy gear, re-codification of the commercial and recreational quotas for greater amberjack, revision of the recreational accountability measure for greater amberjack, and removal of outdated language for the red snapper individual fishing quota program. The intended effect of this final rule was to help prevent overfishing of red grouper while achieving optimum yield by reducing red grouper harvest, consistent with the findings of the recent stock assessment for this species, and to implement technical corrections to the regulations. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act.
14. Atlantic Highly Migratory Species; 2011 Commercial Fishing Season and Adaptive Management Measures for the Atlantic Shark Fishery. RIN 0648-AY98 (75 FR 76302; December 8, 2010). This final rule established opening dates and adjusted quotas for the 2011 fishing season for sandbar sharks, non-sandbar large coastal sharks (LCS),

blacknose shark, non-blacknose small coastal shark (SCS), blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) based on any over- and/or underharvests experienced during the 2009 and 2010 Atlantic commercial shark fishing seasons. NMFS was taking this action to establish the 2011 adjusted fishing quotas and to open the commercial fishing seasons for the Atlantic sandbar shark, non-sandbar LCS, blacknose shark, non-blacknose SCS, and pelagic shark fisheries based on over- and underharvests from the 2009 and 2010 fishing season. This action was expected to affect commercial shark fishermen in the Atlantic and Gulf of Mexico regions. In addition to establishing opening dates and adjusting annual quotas, this final rule implemented adaptive management measures, including flexible opening dates for the fishing season, as well as inseason adjustments to shark trip limits, to provide flexibility in management in the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. These actions were expected to affect commercial shark fishermen in the Atlantic and Gulf of Mexico regions. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act.

15. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 17A; Emergency Rule To Delay Effectiveness of the Snapper-Grouper Area Closure; Final Rule and Temporary Rule. RIN 0648-AY10 (75 FR 76873; December 9, 2010). NMFS issued this final rule to implement Amendment 17A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council. This final rule established an ACL of zero for red snapper, which means all harvest and possession of red snapper in or from the South

Atlantic EEZ is prohibited, and for a vessel with a Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper, harvest and possession of red snapper is prohibited in or from State or Federal waters. This rule also implemented an area closure for South Atlantic snapper-grouper that extends from southern Georgia to northern Florida where harvest and possession of all snapper-grouper species is prohibited (except when fishing with black sea bass pots or spearfishing gear for species other than red snapper), and requires the use of non-stainless steel circle hooks when fishing for snapper-grouper species with hook and line gear north of 28 degrees N. latitude in the South Atlantic EEZ. Additionally, Amendment 17A established a rebuilding plan for red snapper and requires a monitoring program as the AM for red snapper. The intended effects of this rule were to end overfishing of South Atlantic red snapper and rebuild the stock. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act.

16. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 17B. RIN 0648-AY11 (75 FR 82280; December 20, 2010). NMFS issued this final rule to implement Amendment 17B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, as prepared and submitted by the South Atlantic Fishery Management Council. This final rule established ACLs and AMs for eight snapper-grouper species in the FMP that were undergoing overfishing, and for black grouper, which was recently assessed and determined to not be undergoing overfishing or overfished; modified management measures to limit total mortality of those species to the ACL; and added ACLs, annual catch targets (ACTs), and AMs to the list of management measures that may be amended

via the framework process. The intent of this final rule was to address overfishing of eight snapper-grouper species while maintaining catch levels consistent with achieving optimum yield. This action was conducted by NMFS under the authority of the Magnuson-Stevens Act.

Availability of Completed Reviews

NMFS will make available a copy of this notice and the completed reviews to the public at: http://www.nmfs.noaa.gov/sfa/laws_policies/economic_social/index.html.

Dated: June 2, 2017.

Margo B. Schulze-Haugen,

Acting Deputy Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

[FR Doc. 2017-11815 Filed: 6/6/2017 8:45 am; Publication Date: 6/7/2017]